New Nouveau Brunswick

2010 – 2011

Annual Report

Family Income Security Appeal Board

February 20, 2012

Honorable Susan (Sue) Stultz
Minister of Social Development
Province of New Brunswick

Dear Mrs. Minister:

On behalf of the Family Income Security Appeal Board, I have the honour to submit the Annual Report for the fiscal year of April 1, 2010 to March 31, 2011.

Yours,

_____

Kathy Briggs
Chairperson

c.c.: Members of the Board

MESSAGE FROM THE CHAIR

The Family Income Security Appeal Board continued to fulfill its mandate by hearing appeals within the jurisdiction under the Act during the fiscal year ending March 31, 2011.

During this period, the Board operated with one Chairperson, namely; Kathy Briggs and one Vice-Chairperson, namely; Pierre Godin.

Hearing of appeals is a process that is becoming increasingly more complex. As a result, the Board members must demonstrate a high level of competence and understanding of the relevant legislation, coupled with compassion, while maintaining the Principles of Natural Justice. They must be prepared to make objective decisions within the *Family Income Security Act* and Regulations based on the findings of fact and all the evidence presented at the hearing.

Inherent in the Board's mandate is a demand of a high level of appreciation of the Principles of Administrative Law and Natural Justice.

This Annual Report, presented to the Minister of Social Development, provides a description of the Board's mandate, reviews it's historical development, outlines it's procedures and provides a summary of the subject of appeals and overview of the quantitative features of the service provided to the residents of New Brunswick by FISAB during the 2010-2011 fiscal year.

TABLE OF CONTENTS

Page

1. Transmittal letter

2. Message from the Chair

3. Table of Contents

4. Introduction and Background of the Board 1

5. Members of the Board 2

6. Our Role 3
   Jurisdiction and Limits 3

7. Historical Review 5

8. Hearing Locations 6

9. Statistical Review of Decisions 6

10. Statistical Tables: 6
    (a) Appeals by month 7
    (b) Appeals by marital status 8
    (c) Appeals by age group 9
    (d) Appeals by gender 10
    (e) Appeals by outcome 11
    (f) Appeals by reason 12
    (g) Appeals by region 13
    (h) Appeals by region 1 14
    (i) Appeals by region 2 15
    (j) Appeals by region 3 16
    (k) Appeals by region 4 17
    (l) Appeals by region 5 18
    (m) Appeals by region 6 19
    (n) Appeals by region 7 20
    (o) Appeals by region 8 21

11. Activities of the Ombudsman 22

12. Added Responsibilities 22

13. Authority Structure of the Appeal Board 24

INTRODUCTION AND BACKGROUND OF THE BOARD

Provincial Appeal Boards were established as a result of a Canada wide review of Social Policy culminating under the enactment of a Federal legislation, known as the Canada Assistance Program (CAP). New Brunswick's initiative resulted in the Social Welfare Appeals Board which was established in 1970 under the *Social Welfare Act* and Regulations to permit applicants and clients to seek an independent review of a Departmental decision. It is a quasi-judicial, independent tribunal, based on Administrative Law of Natural Justice.

Subsequently, the *Family Income Security Act* and Regulations were proclaimed. Effective April 1, 1996,"The Social Welfare Appeal Board is terminated" as set out in Section 30(1) of Regulation 95-61. Section 30(2) "...responsibilities and liabilities of the Social Welfare Appeals Board are,... transferred to and vested in ...the Regional Family Income Security Appeal Boards created under the General Regulation - *Family Income Security Act*..."

Effective April 1, 2002, the Regional Family Income Security Appeal Boards are terminated further to section 14(2) of New Brunswick Regulation 95-61. A new Board was established under subsection 24(1) of New Brunswick Regulation 95-61 which is now called the Family Income Security Appeal Board.

The Regulations ensure that the Family Income Security Appeal Board is composed of a Chairperson, a Vice-Chairperson, and at least fourteen members who shall be appointed by the Lieutenant-Governor in Council.

Each member of the Board, including the Chairperson and Vice-Chairperson, are appointed for a term of not more than three years and may be reappointed for subsequent terms of not more than three years.

MEMBERS OF THE BOARD

Kathy Briggs, Chairperson	Sisson Ridge
Pierre Godin, Vice-Chairperson	Petit-Rocher
Anne-Marie Mullin, Member	Saint John
†Armand Bouchard, Member	St-Jean-Baptiste
Aroon Bailey, Member	Newcastle Centre
Barbara Leger, Member	Hanwell
Bernard Gautreau, Member	Shediac
Betty MacWilliam, Member	Fredericton
Charles Asoyuf, Member	Miramichi
Eileen Malone, Member	Fredericton
Francine Mulherin, Member	Grand-Sault
Grace Losier, Member	Grand-Bay-Westfield
Jacques Lanteigne, Member	Caraquet
Jean-Clovis Collette, Member	St-Edouard-de-Kent
Léo-Paul Leger, Member	Fredericton
Linda Watson, Member	Springfield
Lloyd Sutherland, Member	New Maryland
Rhéal Belliveau, Member	Moncton
Sharon Michaud, Member	DSL de St-André
Teresa (Terry) James, Member	Blacks Harbour
Terry Ogilvie, Member	Salisbury
Yves Roy, Member	Caraquet

† Armand Bouchard passed away on July 11, 2010.

OUR ROLE

JURISDICTION AND LIMITS

The Appeal Board hearing is the final step in a three-tiered appeal process. The first two steps are internal administrative reviews; the third and final step is an appeal to an external review body, the Family Income Security Appeal Board. The Board is required, by its quasi-judicial nature, to conduct hearings in a court-like manner, although less formally, while still applying the rules of Natural Justice. The Board must provide a fair and unbiased assessment of the facts presented during a hearing as a basis for its decision.

Notwithstanding, the focal point of the Board's mandate is to ascertain the truth of the matter before them. To ensure that the Board have the power and authority necessary to accomplish it's mandate, the Government of New Brunswick has provided the Board "... all the powers conferred on a Commissioner or Commissioners appointed under the *Inquiries Act* and all provisions of that Act, when applicable to and not inconsistent with the provisions of this Regulation, shall apply to an appeal." (Section 28(5) of Regulation 95-61 under the *Family Income Security Act*.)

Decisions of the Board are final and conclusive, as set out in Section 29(1), of Regulation 95-61, *Family Income Security Act*. However, parties to the hearing who believes that the Appeal Board has erred in law, may appeal to the Court of Queen's Bench for a judicial review of the decision. The decision will be set aside if the Courts find the Board violated the rules or did not follow the principles of Natural Justice.

The Appeal Board hears cases at the request of appellants relating to matters under the jurisdiction of the Act. The Board is bound by the Act and Regulations but may choose not to follow the Departmental Policy Guidelines.

Clients are advised that the Board do not make regulations and cannot change them; however, the Board does make recommendations to the Minister. The Board will provide an open and unbiased review of the circumstance surrounding the decision made by the Department. The Board is not a legislative body.

The Board may also investigate and report to the Minister on any matter under the Act or Regulations that may be referred to them by the Minister.

HISTORICAL REVIEW

When the Government of Canada first established tribunals and boards, on a large scale at the beginning of this century, it did not detail their procedures. It fell to the Courts to determine whether these bodies were to conform to normal judicial methods. As a result, tribunal's procedures developed gradually over time, based on the principles of Administrative Law.

In 1970, the Social Welfare Appeals Board was established as a quasi-judicial tribunal, subject to the Rules of Natural Justice. The two principles most commonly called the "Rules of Natural Justice" were outlined by Lord Haldane:

(1) They must deal with the question referred to them without bias;
(2) They must give to each of the parties the opportunity of adequately presenting their case.

To ensure the freedom from bias required by these Rules of Natural Justice, the Appeal Board maintains an "arms-length" relationship to Government; appointments to the Board are made by the Lieutenant-Governor in Council.

To further support the objective of independence, Section 24(3) of the Regulations provides that no person who is, or has been, within six months, employed in the Civil Service of the Province, shall be eligible for appointment to the Appeal Board.

The legislature also wishes to guard against Departmental interference in the actions of the Appeal Board. Thus, "... the decision of the majority of the members of a Board who hear an appeal shall be final and conclusive ..." (Section 29(1) of Regulation 95-61 under the *Family Income Security Act*), but "... an appeal shall be decided on its own merits and in accordance with the Act and this Regulation..." (Section 28(9) of Regulation 95-61 under the *Family Income Security Act*). This means simply that while the Board is independent of the Department, both the Department and the Appeal Board are bound by the provisions of the *Family Income Security Act* and Regulations.

HEARING LOCATIONS

Hearings are held on neutral ground in the community where the client is served by the Department of Social Development. The Board obtains or rents space accessible to the physically challenged in community colleges, municipal buildings, community centers or, as a last resort, hotel conference rooms.

Hearings are held in the following communities:

Region 1 - Richibucto / Sackville / Shediac / Moncton

Region 2 - Saint John / Sussex / St. Stephen

Region 3 - Fredericton / Woodstock / Perth-Andover

Region 4 - Edmundston / Grand-Falls

Region 5 - Campbellton / Kedgwick

Region 6 - Bathurst

Region 7 - Miramichi / Néguac

Region 8 - Caraquet / Shippagan / Tracadie-Sheila

STATISTICAL REVIEW OF DECISIONS

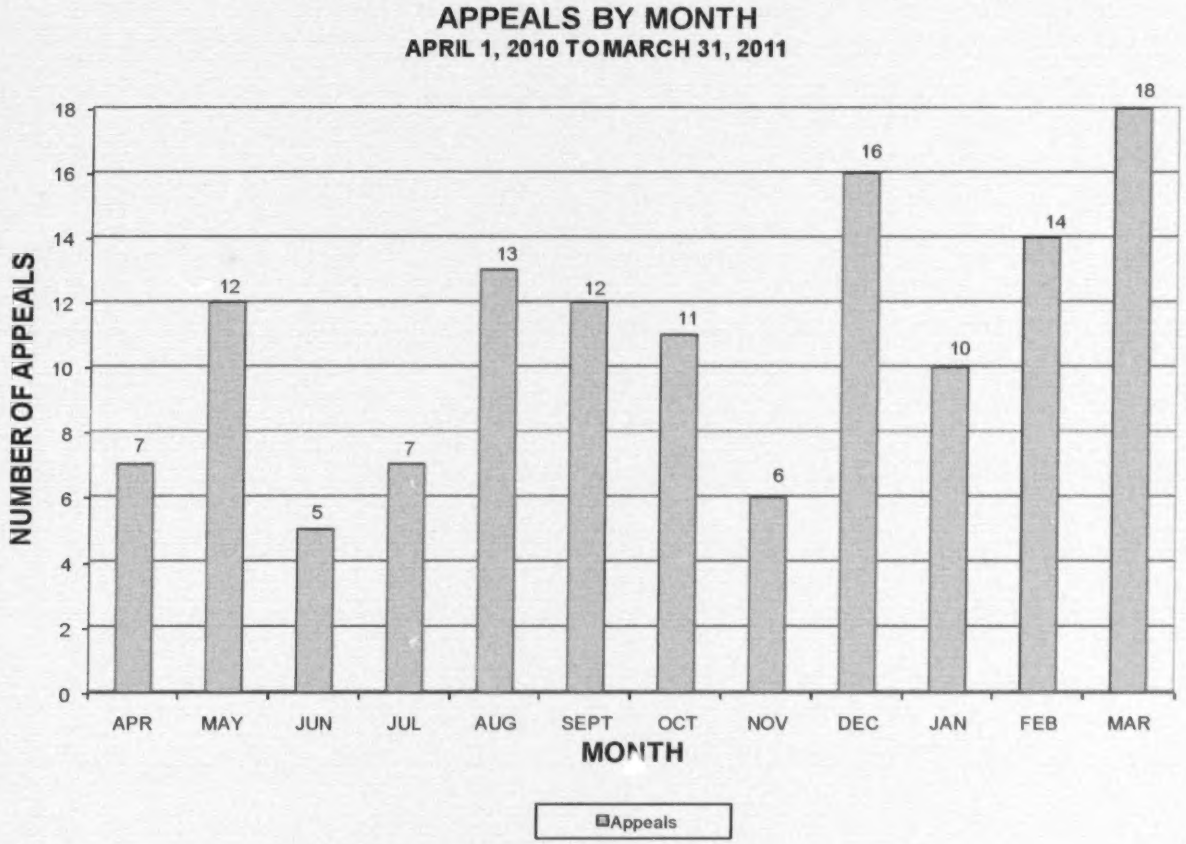
There were 131 notice of appeals received in 2010 -2011. During the past nine years the numbers of appeals were as follows:

2010-2011 - 131	2007-2008 - 126	2004-2005 - 195
2009-2010 - 119	2006-2007 - 148	2003-2004 - 249
2008-2009 - 111	2005-2006 - 181	2002-2003 - 198

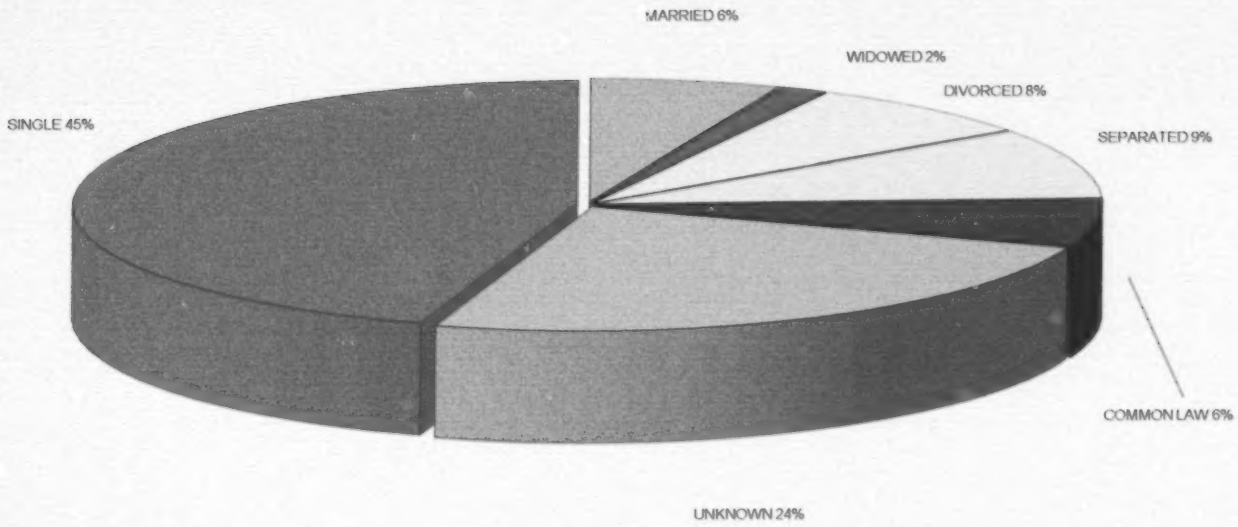
Out of the 131 notice of appeals received in the fiscal year 2010 - 2011, 24 were allowed, 107 were dismissed (which includes 28 cancelled and 4 no shows). The ratio of males to females were 50 (38%) to 81 (62%) respectively.

STATISTICAL TABLES

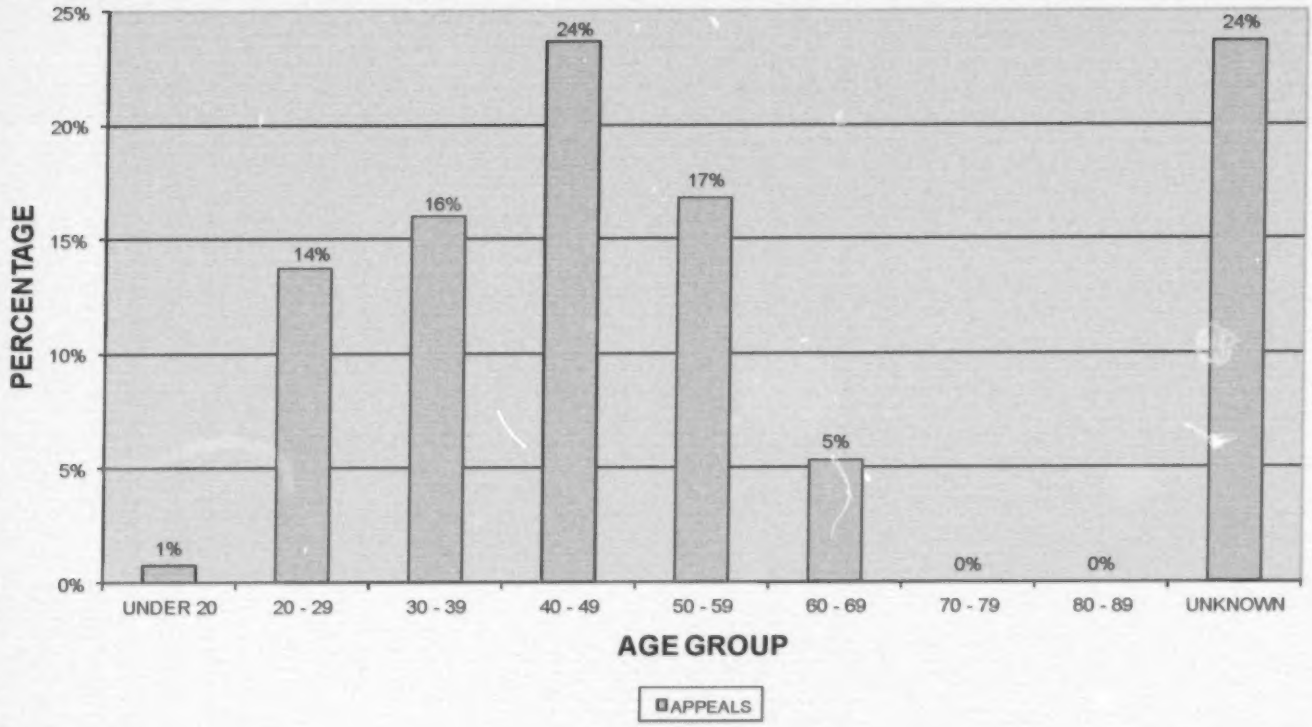
The following statistics refer to the fiscal year of April 1, 2010 to March 31, 2011



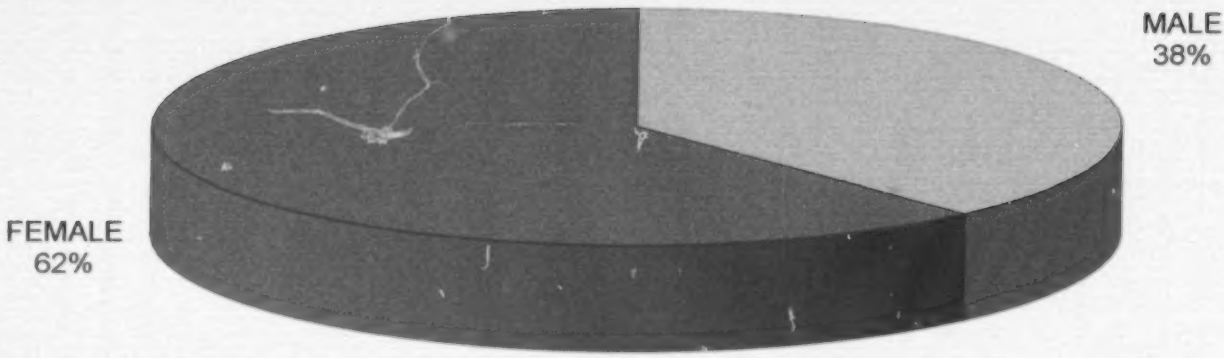
APPEALS BY MARITAL STATUS
APRIL 1, 2010 TO MARCH 31, 2011



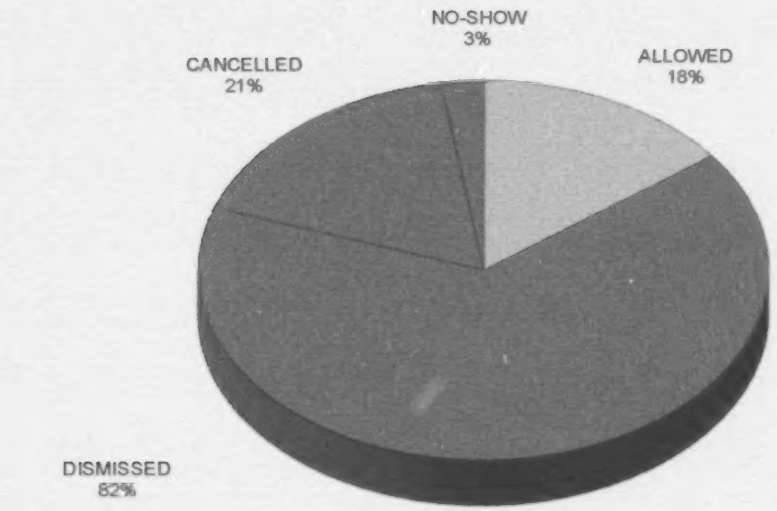
APPEALS BY AGE GROUP
APRIL 1, 2010 TO MARCH 31, 2011



APPEALS BY GENDER
APRIL 1, 2010 TO MARCH 31, 2011

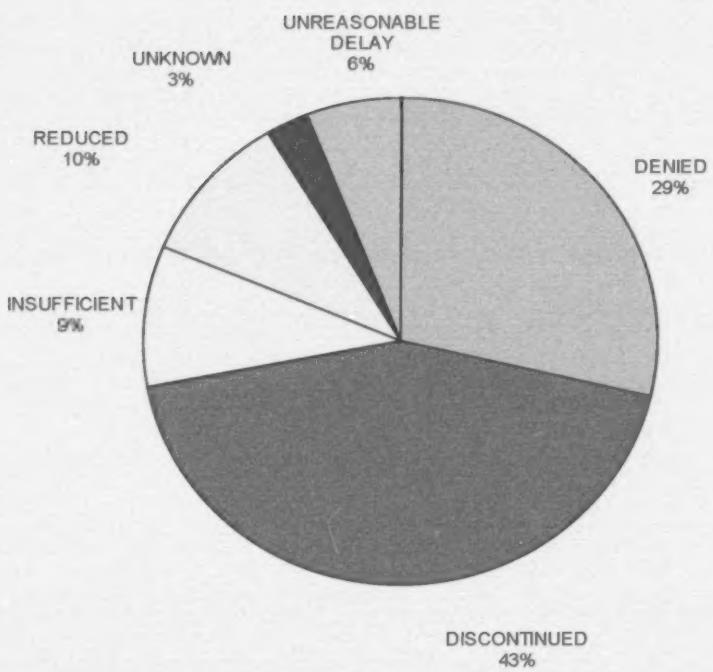


APPEALS BY OUTCOME
APRIL 1, 2010 TO MARCH 31, 2011

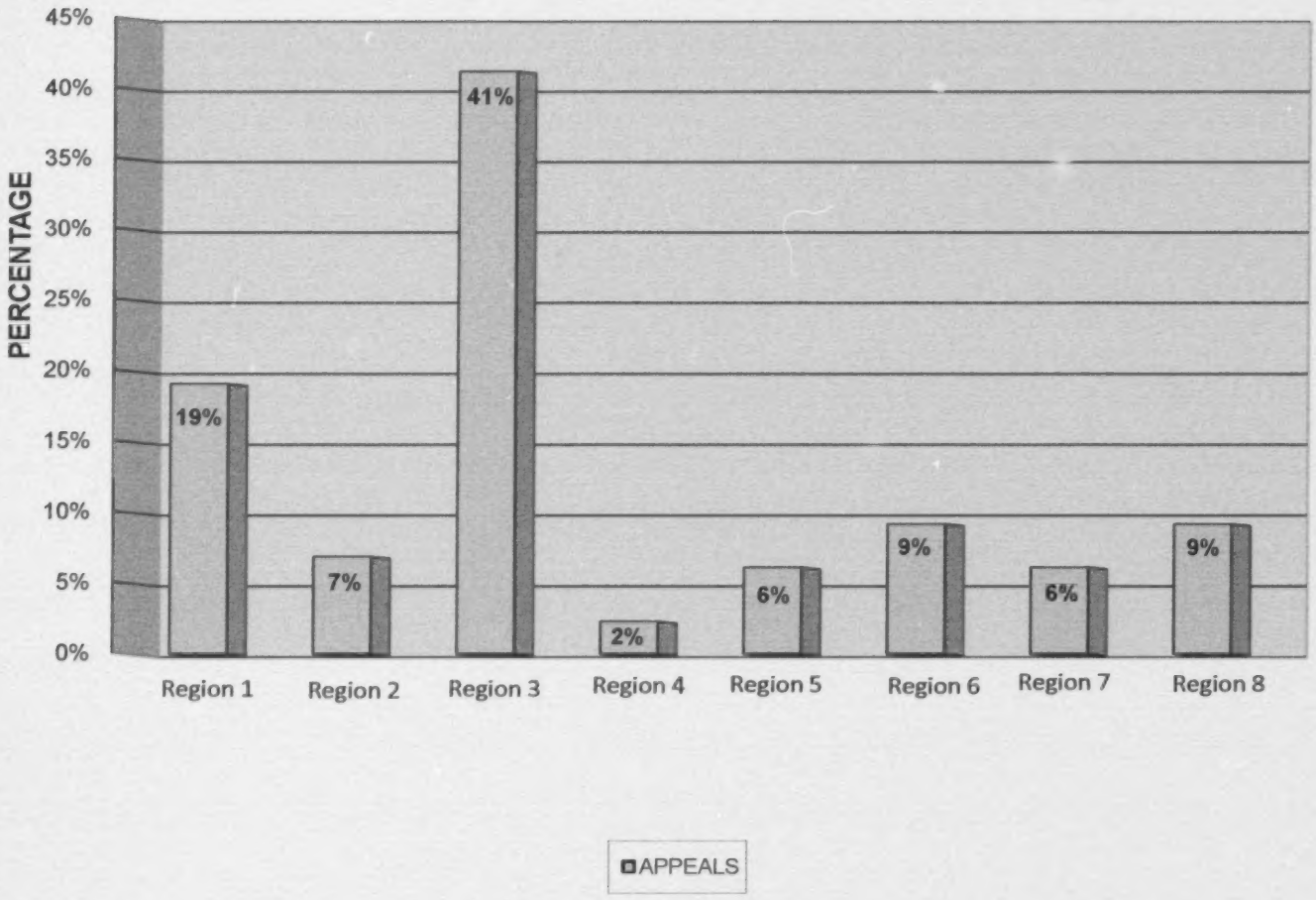


***Dismissed includes Cancelled and No-Show**

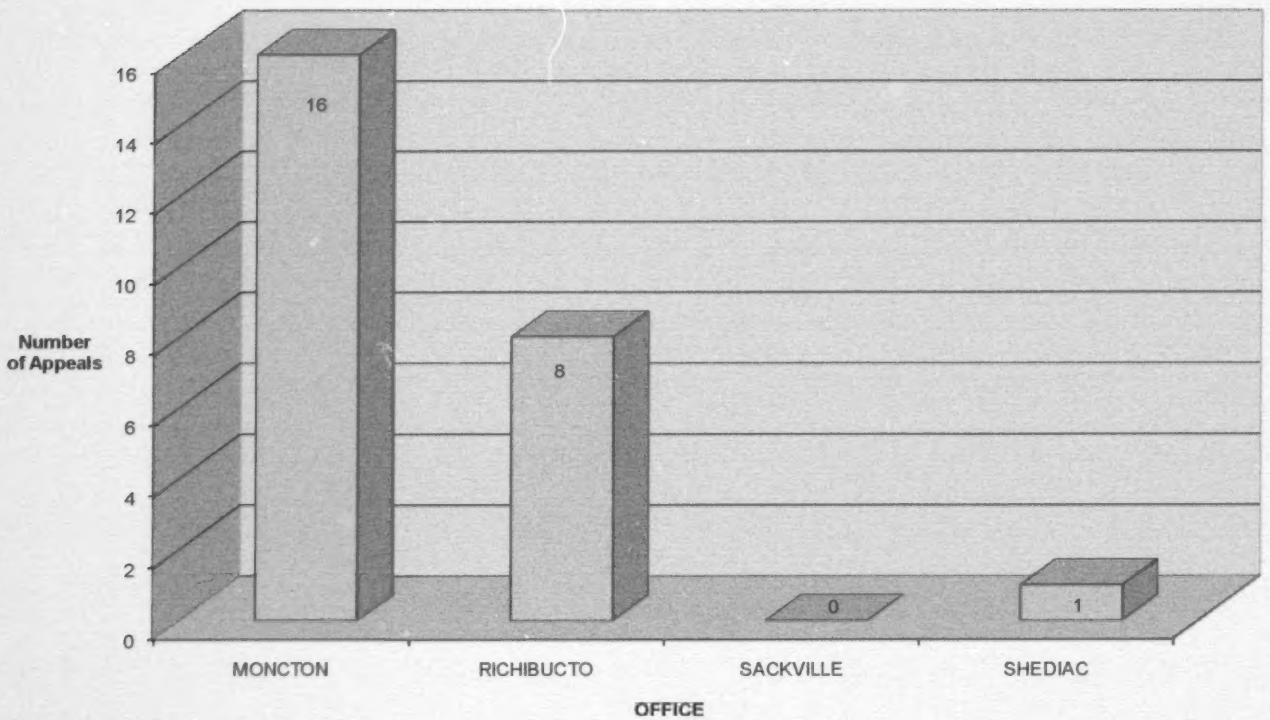
APPEALS BY REASON
APRIL 1, 2010 TO MARCH 31, 2011



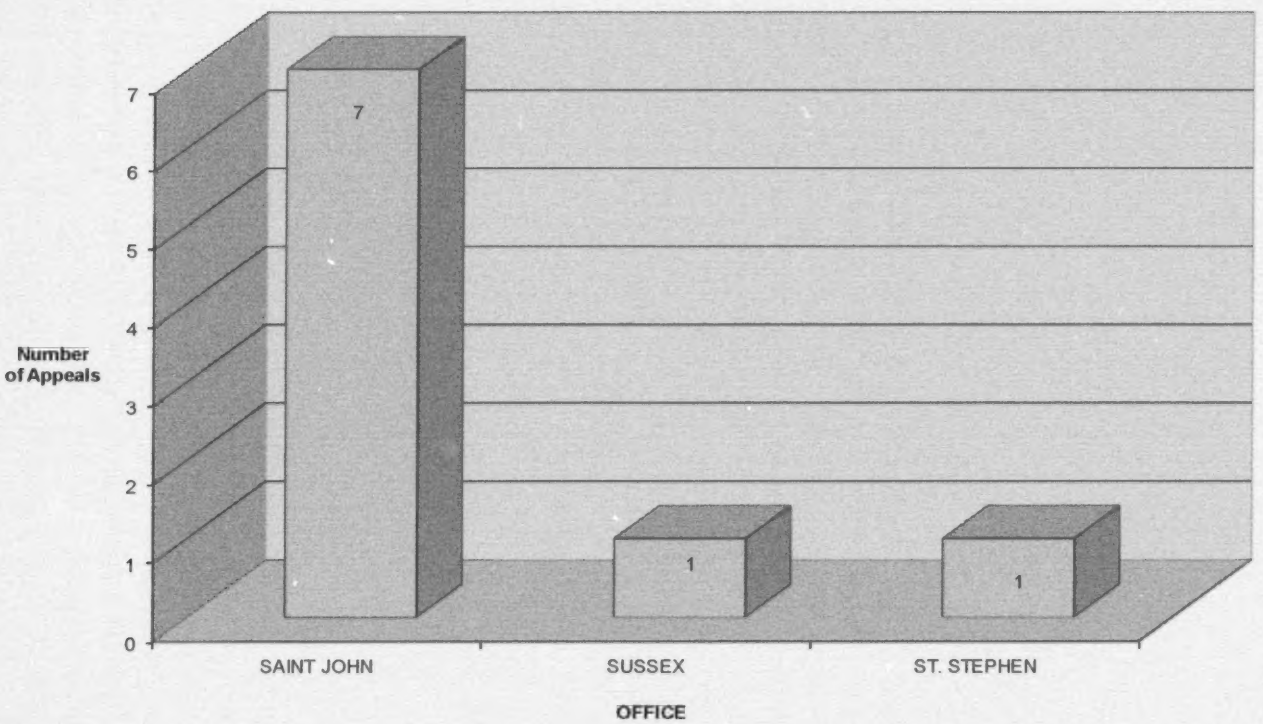
APPEALS BY REGION
APRIL 1, 2010 TO MARCH 31, 2011



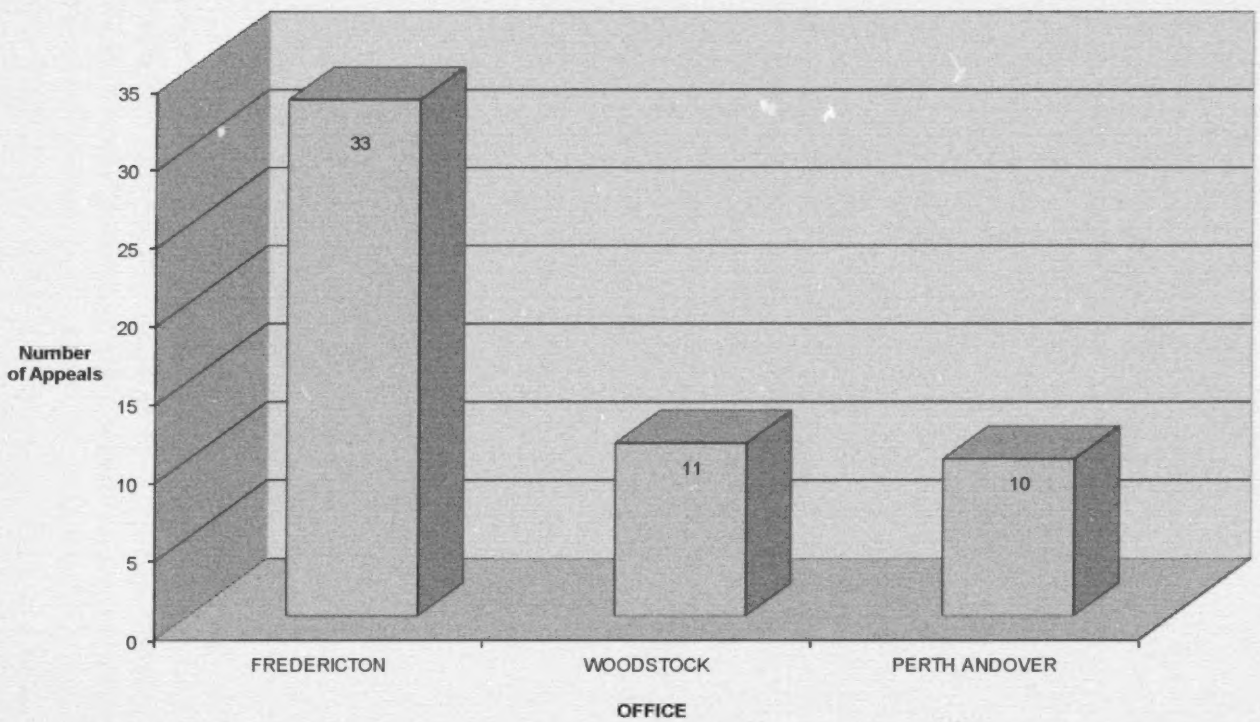
APPEALS BY REGION 1
APRIL 1, 2010 TO MARCH 31, 2011



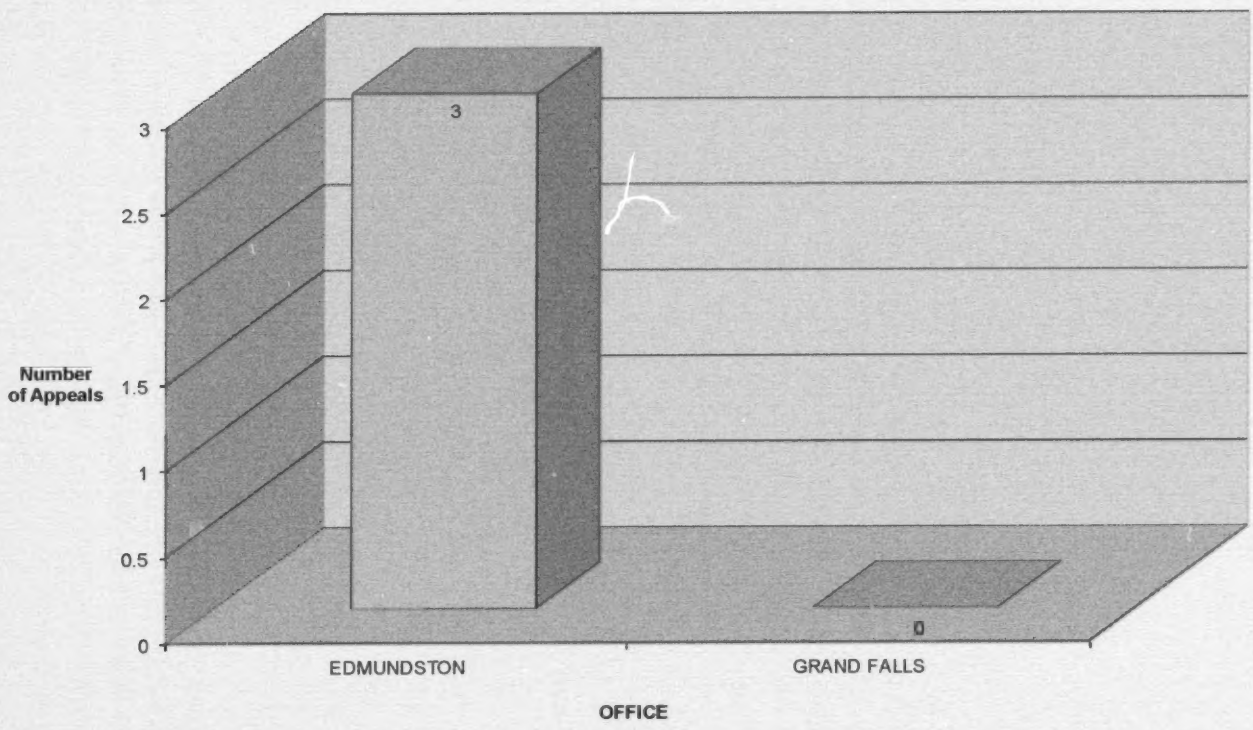
APPEALS BY REGION 2
APRIL 1, 2010 TO MARCH 31, 2011



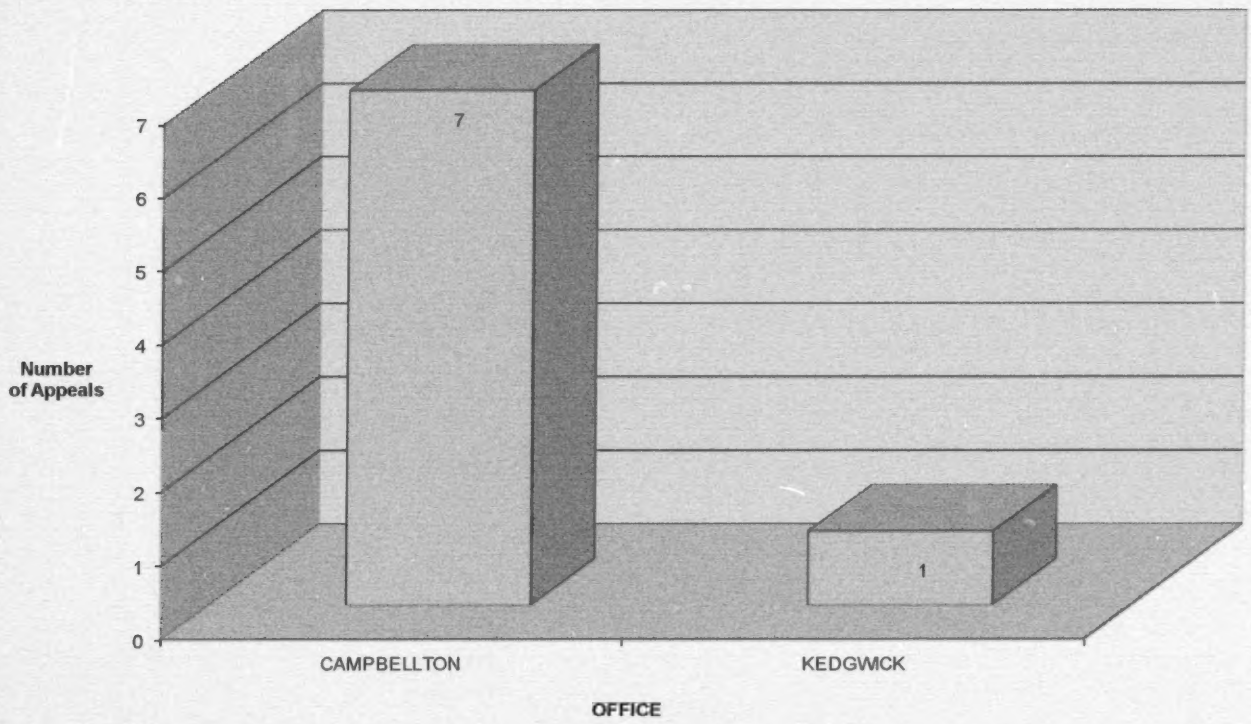
APPEALS BY REGION 3
APRIL 1, 2010 TO MARCH 31, 2011



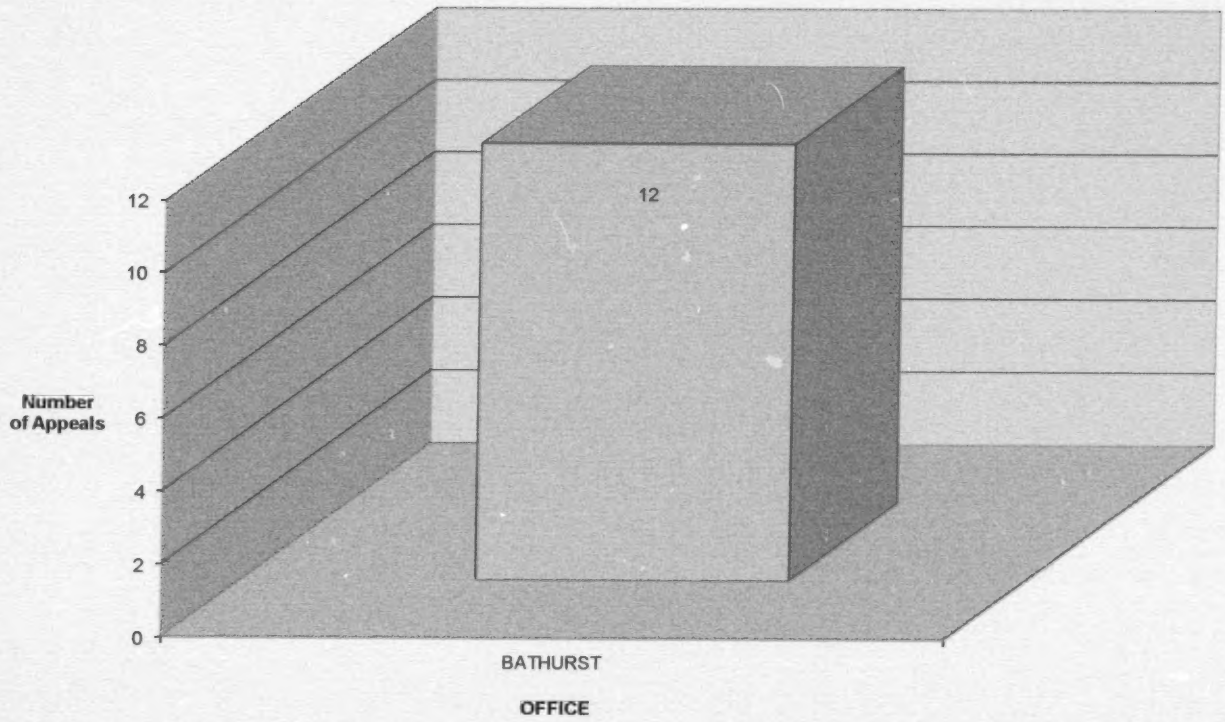
APPEALS BY REGION 4
APRIL 1, 2010 TO MARCH 31, 2011



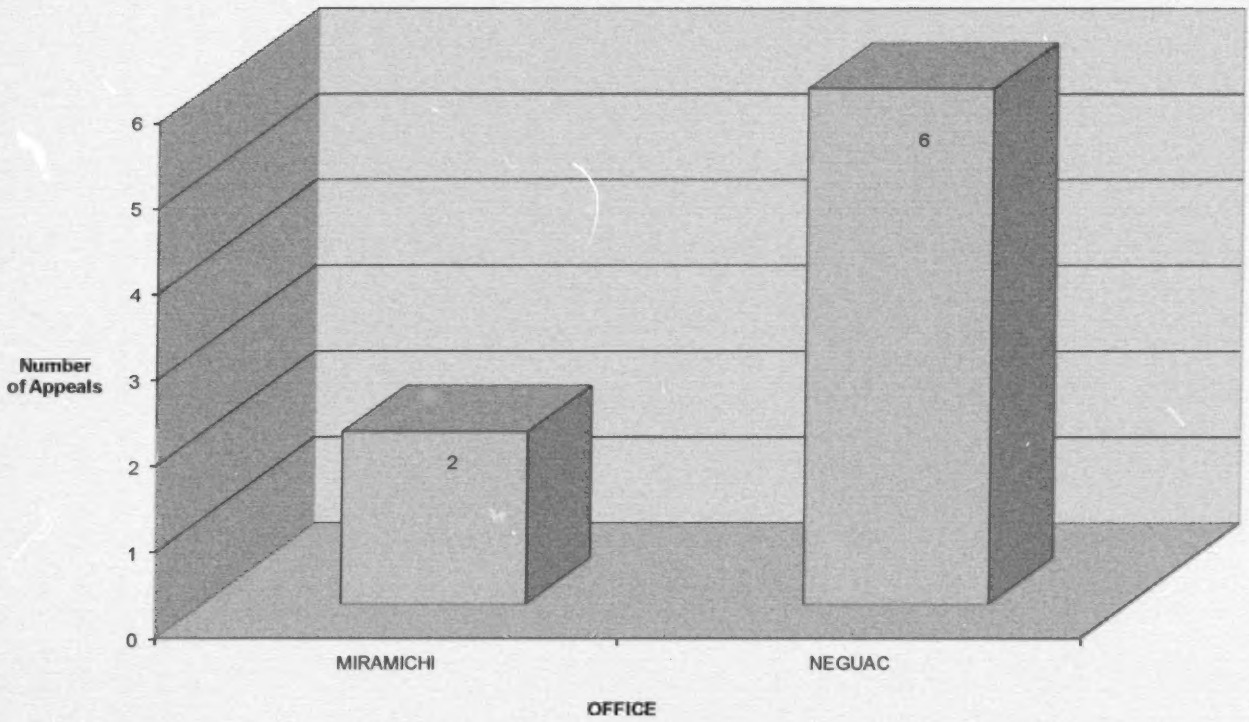
APPEALS BY REGION 5
APRIL 1, 2010 TO MARCH 31, 2011



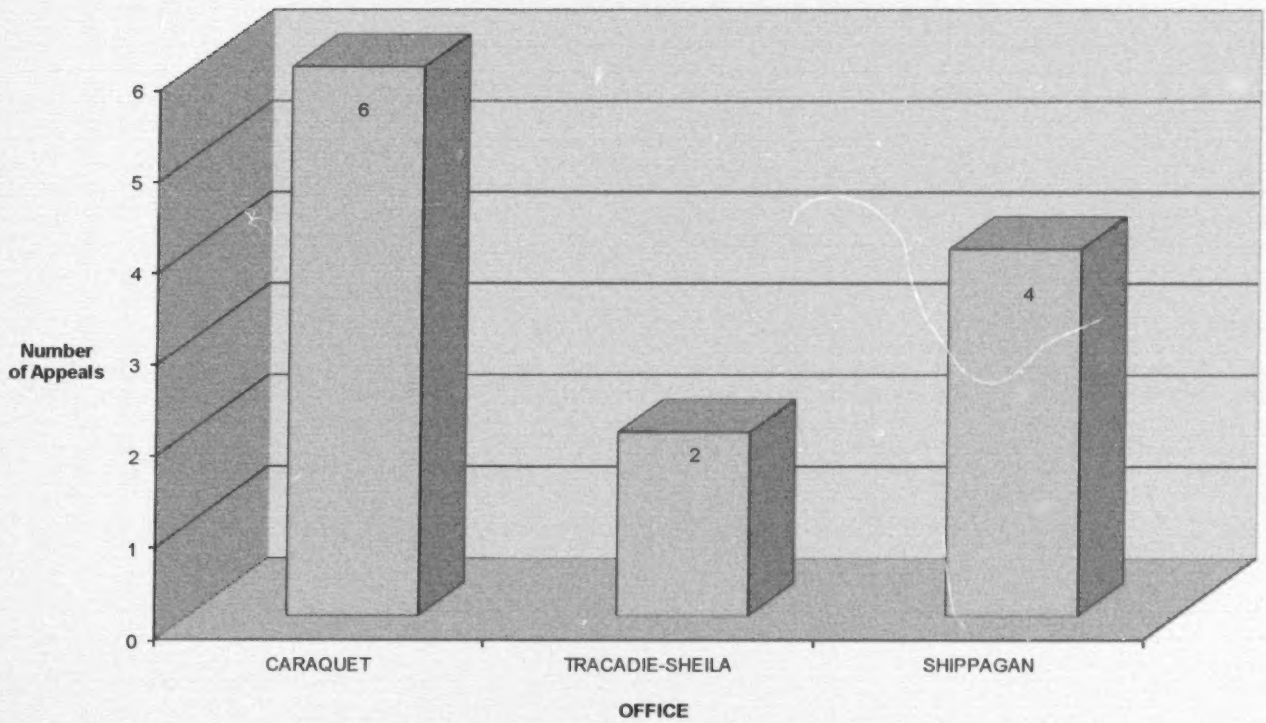
APPEALS BY REGION 6
APRIL 1, 2010 TO MARCH 31, 2011



APPEALS BY REGION 7
APRIL 1, 2010 TO MARCH 31, 2011



APPEALS BY REGION 8
APRIL 1, 2010 TO MARCH 31, 2011



ACTIVITIES OF THE OMBUDSMAN

A decision of the Family Income Security Appeal Board is final and conclusive; however, persons dissatisfied with a decision of the Board may take their complaints to the Ombudsman. The Ombudsman cannot change the decision of a Board, nevertheless, he can and does review the circumstances, sometimes in depth, to determine whether or not, in his opinion, the complaint can be substantiated. He may also choose to make recommendations to the Board or directly to the Minister of Social Development, or deal with the situation in his Annual Report.

ADDED RESPONSIBILITIES

The Act and Regulations requires the Chairperson to convene a hearing within 20 days upon receipt of an appeal. The appellant and all parties to the appeal are notified in writing of the date, time and place of the hearing at least 5 days prior to the hearing.

Hearings are held in the language of the appellant's choice in a neutral location. Appeal locations are chosen specifically with the appellant in mind. Appellants speaking a third language, and having difficulty in English and French, may bring their own interpreter for other languages.

Although hearings are conducted in an informal manner, the Board's procedures must rigidly conform to the Principles of Administrative Law and the Rules of Natural Justice.

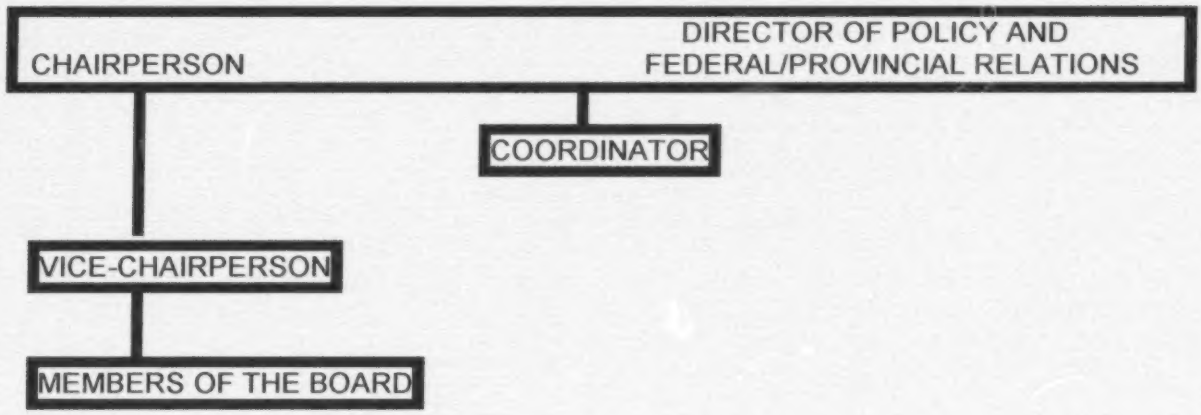
Each appellant is entitled to be accompanied by one person of their choice and to call witnesses; they may choose to be represented by legal counsel or they may delegate another individual to act on their behalf. The Department of Social Development is represented at the hearing by the designated officer to present evidence and may also call witnesses.

An appeal is always heard by the Chairperson, or the Vice-Chairperson who acts as Chair, and two board members. The decision of the Appeal Board is final and conclusive as per Section 29(1) of Regulation 95-61, *Family Income Security Act*.

The Board hearing the case reviews the evidence and makes its decision immediately following the hearing. The hearing documents are then written by the Chairperson or Vice-Chairperson and signed by all three members before the next scheduled case is heard. The formal decision is written and forwarded to the Appeal Board office in Saint-Antoine. All decisions are processed and reviewed prior to signature by the Chairperson or Vice-Chairperson. Each decision must be rendered within 15 days of the scheduled hearing.

AUTHORITY STRUCTURE OF THE FAMILY INCOME SECURITY APPEAL BOARD

AUTHORITY:



ACCOUNTABILITY: